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1 Q This is a clinical encounter administrative note from
2 Dr. Jill Volin on March 13, 2013; is that correct?

3 A Correct.

4 Q When was March 18th in terms of the evaluation at
5 Butner; the beginning, middle or end?

6 A He came to us in December, early December, so that's
7 towards the end.

8 Q And this says, despite multiple conversations with the
9 medical service to reassure him, he cannot remember these
10 conversations and -- well, let me backtrack.

11 The patient continues to have problems with memory
12 and confusion; in particular, he believes he has terrible
13 medical illnesses, including malignancy which requires
14 surgery.

15 Despite multiple conversations with the medical
16 service to reassure him, he cannot remember these
17 conversations and perseverates on these issues.

18 Now, at the beginning of your testimony we
19 discussed the phone call that you and I had, correct?

20 A Yes.

21 Q About when was that?

22 A I don't know.

23 Q Was that before or after this medical evaluation
24 administrative note?

25 A I think it was before, but I can't say for certain.

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1 Q And what happened in that conversation with me?

2 A We had a conference call with a staff physician, you,
3 me, and the defendant.

4 Q About what?

5 A About his medical conditions.

6 Q And was he concerned?

7 A Was who concerned?

8 Q Mr. Bumagin.

9 A Yes.

10 Q Why?

11 A Because he had medical conditions that he was concerned
12 about; I don't know particularly why.

13 Q Do you recall the conversation that we had?

14 A I don't recall many details, no.

15 THE COURT: Do you recall it at all?

16 THE WITNESS: Yes.

17 THE COURT: What do you recall?

18 THE WITNESS: I recall that we sat around the
19 table and discussed -- he had concerns about his -- I think
20 a growth on his neck, and he had -- he had been diagnosed
21 with hepatitis and it probably came up during that
22 conversation; although, I can't say for sure. I know that
23 the physician notes it in the medical records later.

24 And then Ms. Dolan asked us questions and asked
25 the defendant questions, and I was really an observer,

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1 because I'm not a medical expert, but our team physician
2 provided information to Ms. Dolan and to the defendant about
3 his medical conditions as he understood them, what tests
4 they were going to order, and what they were planning to do
5 in terms to treat him.

6 Q And Mr. Bumagin was concerned that he had a
7 carcinogenic growth on his liver, correct?

8 A Yes.

9 Q But it was benign, correct?

10 A Correct.

11 Q And, in fact, Butner medical staff told him it was
12 benign previously, correct?

13 A I don't know if they told him previously to that
14 conversation, but I believe they had.

15 Q And this is Defendant's Exhibit B. This is a report by
16 you, is it not?

17 A Yes.

18 Q And this is where he talks about a growth on his neck,
19 correct?

20 A Yes.

21 Q And you noted that in the past he has had multiple
22 somatic complaints, and many of them were not based on
23 realty. For example, he continues to say he has liver
24 cancer despite this writer, the MD, his attorney, and him
25 having a conference call in which his medical problems were

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1 discussed in detail, correct?

2 A Yes.

3 Q And that's on March 1st of 2013, correct?

4 A Yes.

5 Q 17 days before the report that we were just discussing,
6 correct?

7 A Yes.

8 Q Now, Defendant's Exhibit C, this is a report again by
9 Dr. Jill Volin. It notes Mr. Bumagin has a history and
10 diagnosis of Alzheimer's disease and a family history of
11 Alzheimer's disease. Mr. Bumagin also has evidence of
12 atrophy and vascular disease; and also substance abuse.

13 THE COURT: Would you use the microphone, counsel,
14 you're a little hard to hear. Go ahead.

15 Q It notes that a particular test was off for not knowing
16 day, date, month, year or season and delayed recall of three
17 objects; correct?

18 A Yes. That's what's written here, yes.

19 Q Now, Defendant's Exhibit D, this is a clinical
20 encounter report by a Dr. Bennett.

21 A Mr. Bennett.

22 Q Mr. Bennett. Evaluation date of February 13, 2013.
23 What is this clinical encounter report have to do with?

24 A Mr. Bennett works in the physical therapy department
25 and it looks like they took some scans and did some tests to

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1 see why he's having trouble with his shoulder, and he was
2 referring referred for physical therapy for rehab.

3 Q Now, on the second page of that report, in the
4 assessment portion, it says, he will likely need some
5 assistance with remembering his program due to dementia,
6 correct?

7 A Correct, that's what it says.

8 Q Now, this is Defendant's Exhibit E. This is a report,
9 another report from Dr. Volin or Vo-lynn, I'm not sure if
10 I'm pronouncing it correctly?

11 A Vo-lynn.

12 Q Volin. Dr. Volin, from January 22nd, and it notes that
13 patient continues to have problems with memory and
14 confusion, correct?

15 A Yes.

16 Q Just a couple more of these.

17 So Defendant's Exhibit F, this is January 18th,
18 Dr. Karol. Now, this notes that he has had a hemangioma
19 since at least 2008. What is that exactly?

20 A I'm not a medical expert, I'm not sure, but it's a
21 growth.

22 Q Paragraph four notes he has had a rather clear
23 sensorium, but will frequently forget things, correct?

24 A That's what it says, yes.

25 Q And what does a sensorium mean?

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1 A Sensorium would be he's not hearing things and seeing
2 things, his senses are not intact, he's not having
3 perception disorder symptoms.

4 Q But it does note that he frequently forgets things?

5 A It did not that, yes.

6 Q Defendant's Exhibit G, this is a report from
7 Dr. Yeboah, January 14, 2013.

8 A Nurse Yeboah.

9 Q Nurse Yeboah, pardon me. Notes inmate has dementia and
10 needs to be repeatedly reminded about what's being done,
11 correct?

12 A That's what it says here, yes.

13 Q I have two more. Defendant's Exhibit H, this is
14 Dr. Volin again, this goes back to December, and it also
15 notes he is currently experiencing signs of Alzheimer's,
16 particularly with memory problems, cannot find his cell.
17 His MRI showing atrophy is also consistent with Alzheimer's,
18 correct?

19 A That's what it says, yes.

20 Q And Alzheimer's is a form of dementia, correct?

21 A Yes.

22 Q And it's the most common form of dementia, generally
23 speaking?

24 A I don't know.

25 Q Why don't you know?

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1 A I don't know if it's the most common, I don't know if
2 vascular dementia is more common than Alzheimer's dementia.
3 I know it's more difficult to diagnosis. I don't know what
4 the literature says about if it's common, both of them are
5 common.

6 Q Are you a neuropsychologist?

7 A No.

8 Q Did you have a neuropsychologist on the team?

9 A I did, yes.

10 Q And did you consult with her?

11 A Yes.

12 Q And do you recall discussing with her Alzheimer's and
13 dementia?

14 A We discussed dementia, we discussed different types of
15 dementia, we discussed the records that we had previously,
16 we discussed her test results, previous test results, brain
17 scan results, and we discussed those with the psychiatrist
18 as well.

19 Q I'm showing you Defendant's Exhibit I. These are all
20 reports by you, correct?

21 A This report is, yes.

22 Q Let's go through them. This second report is by you,
23 is it not?

24 A Yes.

25 Q And the third?

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1 A Yes.

2 Q And the fourth?

3 A Yes.

4 Q And the fifth?

5 A Yes.

6 Q Sixth, which is I guess part of the fifth, so there is
7 five or six pages?

8 MR. TROWEL: Your Honor, could we clarify that
9 those six pages are all previously marked as Government
10 Exhibit 3500-JG-04? I think defense counsel marked them
11 collectively as a defense exhibit, just so we're clear about
12 what pages she's looking at.

13 MS. DOLAN: Actually --

14 THE COURT: Is that correct or not correct?

15 MS. DOLAN: -- to split hairs, Mr. Trowel had
16 provided me a corrected version, this is the previous
17 version of 3500-CR-04, but it was later corrected to be
18 3500-JG-04, but it is otherwise the same document.

19 THE COURT: So just so my friends on the 17th
20 floor know what I admitted and what was not before the
21 Court, what is the document that's being admitted. Could we
22 have --

23 MS. DOLAN: These are the medical evaluations,
24 clinical encounter administrative notes produced by
25 Dr. Grant and produced as 3500 material.

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1 THE COURT: And they bear what exhibit numbers?

2 MS. DOLAN: They bear -- this is Defendant's
3 Exhibit I pre-marked for identification as 3500-CR-04, but
4 consistent with and the same documents as 3500-JG-04.

5 MR. TROWEL: There was a typo, your Honor. So the
6 volume that your Honor has says 3500-JG-04, and I also
7 submitted the corrected version to Ms. Dolan, but this is
8 the version that has a typo on it.

9 THE COURT: So with that quibble and jot we are
10 now on the same page, and the document is admitted into
11 evidence.

12 MS. DOLAN: Thank you.

13 THE COURT: Please continue.

14 MS. DOLAN: All right.

15 BY MS. DOLAN:

16 Q Now, you noted in this report on March 28th -- this is
17 near the end of the evaluation period, correct?

18 A Yes, I believe his evaluation ended in early April.

19 Q And you noted that he spontaneously added that he
20 thought he had quote, a little memory problem, unquote, but
21 did not believe it was quote, severe, unquote. He inquired
22 about the evaluator's opinion in this case, specifically
23 asking if she thought he was competent. When asked if he
24 wanted to be competent or incompetent, he asked which
25 finding would work better in his favor. After he was

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1 informed about the difference scenarios of each, he said he
2 would rather be found competent.

3 Is that correct?

4 A Yes.

5 Q And page two, I believe that we already discussed this,
6 this one was where in the past -- you reported that
7 Mr. Bumagin said had he had multiple somatic complaints that
8 were not based in reality, correct?

9 A Correct.

10 Q Finally, December 18, 2012, you noted Mr. Bumagin is
11 adjusting well on the open housing unit and no longer meets
12 criteria for the vulnerable patient protocol.

13 What is vulnerable patient protocol?

14 A It's a protocol we put patients on when they first
15 enter our institution to make sure they're monitored
16 closely, to make sure that they're adjusting okay. They go
17 to a specific inpatient mental health housing unit where a
18 nurse and various staff, not only observe them 24/7, but
19 they actually call them in and ask them a line of questions
20 every single day to monitor their mental status.

21 Q And then you note, he should remain on 2G however, due
22 to his dementia. Familiar surroundings may facilitate his
23 ability to negotiate. Is 2G a floor at FMC Butner?

24 A It's a unit on the second floor, yes.

25 Q Is it a special unit in any way?

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1 A It's not special in any way, other than I felt it was
2 best for his ability to navigate and adjust if he just
3 stayed on the same unit. I thought it would help his
4 adjustment.

5 Q Was he having some difficulty adjusting?

6 A Initially, he was not having trouble adjusting, but he
7 was having trouble finding his cell; they all look alike.

8 Q Do all of the inmates have trouble finding their cells?

9 A No, they do not.

10 Q I'm showing you what's been premarked as Defendant's
11 Exhibit 3. Do you recognize this?

12 A I do.

13 Q And what is this?

14 A This is the cover sheet of the treatment plan.

15 Q And I'll try to zoom out.

16 The following pages, is this the balance of the
17 treatment plan?

18 A Yes.

19 MS. DOLAN: I move this into evidence.

20 MR. TROWEL: Just a note, your Honor, this is
21 marked in your Honor's binder as Government
22 Exhibit 3500-JG-05, and the government has no objection to
23 moving it into evidence.

24 THE COURT: It's admitted.

25 (Defendant's Exhibit 3 was admitted into evidence.)

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1 Q Now, just to summarize, there are three different
2 problems in this treatment plan, correct?

3 A I don't have it in front of me now. Problem one, two,
4 and three, yes.

5 Q Okay. And what exactly is a problem?

6 A An area that we are considering ruling out, working on,
7 assessing.

8 Q And then for each problem, there are goals and
9 objectives and an action plan, correct?

10 A Yes.

11 Q So let's have a look at problem number one.

12 Not competent to stand trial as manifested by lack
13 of rational understanding of the charges against him and
14 possible cognitive defects impairing his ability to assist
15 in the preparation of his defense, correct?

16 A Yes.

17 Q Let's go through the objectives.

18 The first objective is, Mr. Bumagin will correctly
19 state the pending legal charges against him for 30 days by
20 90 days, correct?

21 A Yes.

22 Q And was he able to do that?

23 A Yes.

24 Q Was he able to do that when he first came in?

25 A Yes.

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1 Q The second objective is Mr. Bumagin will clearly and
2 realistically -- pardon me.

3 Mr. Bumagin will discuss clearly and realistically
4 the evidence against him and possible legal defense strategy
5 by 90 days, correct?

6 A Yes.

7 Q Now, you testified earlier that our discussions about
8 the case were all there was, correct?

9 A That our discussion was the only --

10 Q The ones that you described were the only discussions
11 that we had, correct?

12 A Yes.

13 Q So you did not discuss possible legal defense
14 strategies with me, did you?

15 A No, I didn't feel like that was my place.

16 Q And lastly, Mr. Bumagin will explain the pros and cons
17 of legal options by 90 days.

18 Was he able to do that?

19 A Yes, he was able to do that in the competency
20 restoration group.

21 Q When was that?

22 A He had attended the group throughout the four-month
23 period.

24 Q But going back to what's been premarked as Defendant's
25 Exhibit I, this is your March 28, 2013 report, this is where

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1 Mr. Bumagin specifically inquired about whether he -- it
2 would be better for him to be found competent or
3 incompetent, correct?

4 A Yes.

5 Q Was that report generated before or after your
6 conclusion that Mr. Bumagin was able to explain the pros and
7 cons of legal options by 90 days?

8 A I don't know when he was able to explain the pros and
9 cons of legal actions. This treatment plan is generated as
10 soon as he entered our institution, when we had our first
11 team meeting, approximately one week after he arrived.

12 It was an area to work on. I don't know if he was
13 able to do that within 90 days, but he was able to do that
14 by the end of the evaluation period, according to the
15 facilitator of the competency restoration group.

16 Q Which was what, within seven days after Defendant's
17 Exhibit I, that report, he was restored to competency? When
18 did what you just described happen?

19 A Like I said, I'm not sure when it happened. I talked
20 -- I consulted with the facilitator of the competency
21 restoration group, as I always do, throughout an
22 individual's evaluation with us, and she reported that he
23 did not attend all of the sessions. But when he did show up
24 and was asked questions of this matter, that he -- of this
25 manner, excuse me, he was able to answer them correctly.

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1 Q But was that before or after you formed the conclusion
2 that that goal had been met?

3 A I didn't form that conclusion within a particular time
4 period, this was a goal to work on. I'm not sure that it
5 occurred within 90 days, I don't have a timeline for that,
6 when she asked specific questions regarding this.

7 Q Did you not testify three or four minutes ago that
8 Mr. Bumagin was able to explain the pros and cons of legal
9 options?

10 A Yes, but I don't believe I said it occurred in 90 days.
11 I'm not sure how many days in the group and at which point
12 in the group they discussed that particular subject matter.

13 MS. DOLAN: Just one moment, your Honor?

14 THE COURT: Take your time.

15 (Pause.)

16 Q Your report was generated on April 4th of 2013,
17 correct?

18 A Yes.

19 Q Seven days -- six or seven days after Defendant's
20 Exhibit I, the March 28th clinical encounter administrative
21 note, correct?

22 A Yes.

23 Q So did Mr. Bumagin, within six or and seven days, come
24 to understand whether it was quote, unquote better, unquote,
25 for him to be found competent or incompetent?

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1 A I'm not sure I understand your question.

2 THE COURT: Was there a time when Mr. Bumagin,
3 according to your notes, did not understand whether it was
4 better or not better to be found incompetent, according to
5 your notes, was there such a time?

6 THE WITNESS: It didn't come up prior to this.

7 THE COURT: No. But was there such a time in your
8 notes that your notes reflect that?

9 THE WITNESS: I don't believe so.

10 THE COURT: Go ahead.

11 BY MS. DOLAN:

12 Q Correct me if I'm wrong, that was the first time that
13 the question of whether it was better for him to be found
14 competent or incompetent came up in your entire evaluation
15 of him?

16 A That was the first time he asked me that question
17 directly.

18 THE COURT: Well, putting aside directly or
19 indirectly, was that the first time it came up?

20 THE WITNESS: It came up multiple times in the
21 competency restoration group that he attended weekly.

22 Q Was he provided advice in those discussions?

23 A No. It's my -- I did not sit in on the groups, but I
24 know the information that's provided in the groups. It
25 focuses on the legal process, it doesn't provide any

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1 specific advice about any person's particular case; in fact,
2 they steer away from that.

3 Q So approximately how many times had that topic been
4 discussed in those groups before it was discussed with you?

5 A I'm not sure.

6 Q Do you believe it was more than once?

7 A Yes.

8 Q Now, you did not contact me to inquire about my working
9 relationship with Mr. Bumagin, did you?

10 A I did not.

11 Q Why not?

12 A I had an example of that when we had our conference
13 call; I felt like he was working well with you.

14 Q Well, we were discussing a subject that I had already
15 discussed with Mr. Bumagin, isn't that so?

16 A Yes.

17 Q And I had already -- and I told Mr. Bumagin in our
18 conversation that we had already discussed it, did I not?

19 A I don't remember if you said that or not.

20 Q And I told Mr. Bumagin in that conversation that you
21 had told me that his liver growth was benign, did I not?

22 A I can't remember what was specifically said.

23 Q You didn't take notes of that conversation?

24 A I did not.

25 Q Did you ever ask me whether Mr. Bumagin remembered our

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1 discussions about his case?

2 A I did not.

3 Q Why not?

4 A I had reports from the previous evaluator that you had
5 already reported that he did not.

6 Q But why didn't you contact me?

7 A I didn't feel it was necessary to reach an opinion.

8 MS. DOLAN: Nothing further.

9 THE COURT: Your witness.

10 CROSS-EXAMINATION

11 BY MR. TROWEL:

12 Q Good afternoon, Dr. Grant.

13 A Good afternoon.

14 Q You testified on direct that you are a you work at FMC
15 Butner, correct?

16 A Correct.

17 Q And in the course of your work there you conduct
18 competency evaluations; is that correct?

19 A Yes.

20 Q You conduct restoration evaluations; is that correct?

21 A Yes.

22 Q And there are other evaluations that you do as well; is
23 that right?

24 A Yes.

25 Q What are the other types?

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1 A Sanity evaluations that would be competency at the time
2 of the offense, and dangerousness evaluations. I have also
3 been involved in evaluating individuals for sentencing
4 purposes or to determine if they need to be housed in an
5 inpatient setting during their incarceration.

6 Q How long have you been working at FMC Butner in this
7 capacity?

8 A I've been at FMC Butner since November of 2000, so
9 almost 14 years.

10 Q And before that, where were you working?

11 A Prior to that, I worked for five years at a neighboring
12 institution at our complex as a drug use program
13 coordinator.

14 Q So in the course of your work at Butner and elsewhere
15 that's relevant, approximately how many competency
16 evaluations and restoration evaluations have you undertaken?

17 A Approximately 500.

18 Q Does that include restoration plus competency?

19 A No. In fact, I did jot down some notes about that.

20 Q Is that a document that you gave to me?

21 A Yes. So I estimated the total number is approximately
22 900 of all the types. And initial competency and competency
23 restoration cases, as a primary evaluator, approximately
24 440.

25 Q And is that information that's -- you're refreshing

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1 your recollection with a document marked 3500-JG-09 that I
2 now have on the Elmo; is that correct?

3 A Yes.

4 Q And have you testified previously in competency
5 evaluations?

6 A I have.

7 Q About how many times?

8 A Total times, over 100. Competency evaluations are the
9 majority of those, so I would have to estimate 70, 75.

10 Q And you've mentioned, I think on direct, that you
11 testified for the defense in the past as well?

12 A I have.

13 Q In the course of your work at Butner, who do you answer
14 to, who do you serve?

15 A Well, the evaluations we conduct are court ordered, so
16 the report goes to directly back to the Judge who ordered
17 the evaluation.

18 Q Do you work for the prosecution?

19 A I do not.

20 Q Do you work for the defense?

21 A No.

22 Q What's your role in giving a competency opinion?

23 A We are objective, independent evaluators and we get our
24 referrals directly from the court itself and not from either
25 side. I would like to think that I'm pretty unbiased in my

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1 opinion and objective, and we try to do the best job we can
2 do conduct a comprehensive evaluation.

3 Q There came a time when you conducted a competency or
4 restoration evaluation of the defendant who is seated in
5 court here; is that correct?

6 A Yes.

7 Q What was your role in that evaluation?

8 A I was the primary evaluator.

9 Q What does that mean to be the primary evaluator?

10 A It means that it's my responsibility to write the
11 majority of the report, to go through the collateral data,
12 synthesize that data, consult with teammates who would be
13 composed of our team psychiatrist, neuropsychologist, if
14 necessary, other medical personnel. I would be consulting
15 with all of those folks. Also, talking with multiple staff
16 members, looking at records, interviewing the patients,
17 conducting testing, if necessary, and put all of that
18 together into a cohesive report.

19 Q So the sources you just identified, those are -- that
20 represents all the data you consider in the course of a
21 restoration evaluation; is that right?

22 A Yes.

23 Q I'm showing you what's been marked as Government
24 Exhibit 1. And I'll turn the page here, just so you can see
25 the next few pages. Do you recognize this?

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1 A I do.

2 Q What is this?

3 A This is the report that I wrote. I wrote the majority
4 of this report.

5 Q And I'm turning now to the last page, page 27. Is this
6 your signature on this report?

7 A It is.

8 Q Does this report contain your analysis and your
9 ultimate opinion about the defendant's competency?

10 A It does.

11 MR. TROWEL: The government -- I don't believe we
12 admitted this, the government moves to admit Government
13 Exhibit 1.

14 MS. DOLAN: I object. This has been litigated.

15 THE COURT: What is the basis of the objection?

16 MS. DOLAN: The basis of the objection is
17 everything as set forth in my previous papers and previous
18 appearances in court; I'm going from memory, but I believe
19 it was May 29th, 2012 and August 9th of 2012. My April,
20 2014 letter to the Court, and my most recent letter to the
21 Court last Friday. Although, I maintain the position that
22 those submissions should not be considered by the Court,
23 because the Court ordered in December of 2013, the parties
24 to submit their proposed discussions regarding the scope of
25 the -- of this hearing, and that was done in April.

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1 Nevertheless, the government followed it up. But insofar as
2 those submissions are considered, I ask that my Friday
3 letter be considered.

4 Essentially, my objection is that Dr. Grant
5 improperly discussed the offense conduct and that this
6 improper litigation of the statements from the defendant is
7 inextricably intertwined with her conclusions in the report.

8 MR. TROWEL: Your Honor, if I may, just very
9 briefly?

10 THE COURT: Very briefly.

11 MR. TROWEL: Ms. Dolan called this witness as an
12 expert to testify about her conclusions with respect to the
13 defendant, first of all. Second of all, your Honor can of
14 course give the report whatever weight your Honor sees fit.
15 I'm asking to admit it as a record of Dr. Grant's
16 conclusions in this case.

17 THE COURT: It doesn't come in as a business
18 record. I indicated before that I thought there were
19 serious problems with this report, with the way it was
20 conducted, with what the position did here, with what the
21 doctor did here, not the physician, excuse me, and I
22 continue to have those concerns having heard her testimony
23 here today. You previously tried to take a premature appeal
24 with respect to this, it wasn't ripe to take the appeal at
25 that time, and you withdrew the appeal, and I'm going to

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1 stick by my previous ruling. I'm not going to admit it. If
2 the Second Circuit wants to have it admitted, we'll come
3 back and we'll do it again. But I assure you, I'm not
4 impressed with the report and I'm not impressed with what
5 the doctor did here by using her position to further develop
6 the case against this defendant, when what she was supposed
7 to do was to determine his competence. That's what was done
8 here. The Court found it offensive on the papers, and the
9 Court continues to find it offensive. It wasn't necessary
10 and it was done. And so I'm keeping the report out for the
11 reasons I previously stated. By all means take your appeal,
12 it will go up and come back down, and then either I or
13 another Judge will look at it again if I'm reversed. But I
14 really think it's important that doctors do what doctors are
15 supposed to do in evaluating the competence of witnesses.
16 This wasn't necessary to do here, to go into the elements of
17 the crime and to get the details to push the envelope. You
18 have plenty of investigators, you have plenty of evidence,
19 it wasn't going to be a problem for you to present this
20 case, but you created a problem by pushing with a physician
21 into areas that you ought not to have pushed. It is
22 offensive. And I said it before and I'll say it again, take
23 your appeal, be my guest on a full record, but I think you
24 will find that the Judges of the Court of Appeals take a dim
25 view of what was done here. I know I take a dim view of

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1 what was done here, because you went way further. Now, go
2 ahead and argue. Go now, go on, you can get up there and
3 argue. You argued before. You don't have to whisper in his
4 ear.

5 MR. TROWEL: No, I'm happy to argue the legal
6 point, if you want.

7 THE COURT: No, I'm saying, your colleague is
8 whispering in your ear. He can get up and argue, you can
9 take the shots directly, go ahead. You've written it up,
10 you've argued, you took a premature appeal, you got slapped
11 back and you withdrew it. You want to do it again, that's
12 fine. It was offensive on paper, it's offense now. You've
13 made your record, okay? It's not coming in.

14 MR. TROWEL: So, your Honor, can I continue with
15 the testimony from Dr. Grant?

16 THE COURT: Sure.

17 MR. TROWEL: Okay.

18 MS. DOLAN: If I may, your Honor, just with
19 respect to that last portion of the discussion, it's not the
20 defense's position that the government utilize Dr. Grant as
21 an instrument per se, but under Federal Criminal Rule 12.2,
22 that it could be used and so...

23 THE COURT: Right. Absolutely.

24 MS. DOLAN: Right.

25 THE COURT: That's the problem.

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1 MS. DOLAN: Thank you.

2 THE COURT: That's the problem with what was done
3 here.

4 MR. TROWEL: Your Honor, her --

5 THE COURT: Do you understand the problem that
6 you, the prosecutors, created in this case?

7 MR. TROWEL: Your Honor, with all due respect, we
8 did not create this problem. You heard testimony from
9 Dr. Brauman a moment ago that she undertook the same
10 procedure. I think your Honor will hear in the course of
11 this testimony, as I've indicated in previous letters to the
12 Court, as we all have, that Dr. Grant asked open-ended
13 appropriate questions. The defendant answered those with
14 facts about the case.

15 THE COURT: I've heard your argument. Go ahead.
16 Ask a question.

17 MR. TROWEL: Just to be clear, you're precluding
18 the report, but permitting me to continue the with witness.

19 THE COURT: I'm precluding the report and I'm
20 going to allow you to ask questions and then there will be
21 objections and then I'll rule on your questions and
22 objections. Let's proceed in that fashion.

23 MR. TROWEL: Okay.

24 BY MR. TROWEL:

25 Q So, Dr. Grant, you drafted a report in this case; is

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1 that correct?

2 A Yes.

3 Q And that report contained your analysis and your
4 ultimate opinion; is that correct?

5 A That's correct.

6 Q And what was your ultimate opinion in this case?

7 A My opinion was that Mr. Bumagin was competent to stand
8 trial.

9 Q And just so the record is clear, although the --

10 MS. DOLAN: Actually, I object to that conclusion.

11 THE COURT: What's the basis of the objection?

12 MS. DOLAN: As I said, I believe that -- I believe
13 that the improper elicitation is inextricably intertwined
14 with the analysis and the conclusion, so I don't think the
15 conclusion is admissible.

16 THE COURT: All right. I'm going to reserve on
17 whether the conclusion is admissible or not. The report is
18 out.

19 MR. TROWEL: So without moving to admit the
20 report, your Honor, just for purposes of identification,
21 Dr. Grant, your report is the one that's been marked as
22 Government Exhibit 1; is that correct?

23 THE WITNESS: Yes.

24 BY MR. TROWEL:

25 Q And that's the report that contains your analysis and

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1 ultimated opinion?

2 A Yes.

3 Q Can you generally describe for the Court what it is
4 that you relied on in reaching your ultimate opinion, the
5 sources of data?

6 A The sources of data included a prior competency
7 evaluation conducted at MCC New York, some limited medical
8 records we received, and I reviewed those with our
9 physicians. Also, a neuropsychological evaluation that was
10 conducted previously, which I reviewed with our
11 neuropsychologist. I conducted individual interviews with
12 Mr. Bumagin. I conducted multiple informal interactions
13 with him. I consulted with nursing staff and custody staff
14 who were able to observe him on a 24-hour basis on an
15 inpatient mental health floor. We conducted psychological
16 testing. I did not do testing myself in this case, but we
17 -- I consulted with our neuropsychologist who conducted a
18 majority of the testing.

19 Q Is that -- are you referring to Dr. Tracy Pennuto?

20 A Yes, Dr. Pennuto.

21 Q And was there an another doctor who also worked with
22 Dr. Pennuto on the testing?

23 A Yes, Dr. Correa at that time. She was a predoctoral
24 intern and working with both of us.

25 Q So is it fair to say you considered all the data that

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1 you just explained in reaching your final opinion?

2 A Yes. And I might also add that I also used or
3 considered collateral data that were sent to me, not only
4 the records, but discovery information and that sort of
5 thing.

6 Q Now, your report, the one that had been marked for
7 identification as Government Exhibit 1, that was issued in
8 April of 2013; is that correct?

9 A Yes.

10 Q And that was -- that's approximately 16 months ago; is
11 that right?

12 A Yes.

13 Q Roughly. Do you have an opinion about the defendant's
14 competency as he sits here today?

15 A I don't know.

16 Q Why is that?

17 A A competency is a fluid state. At the time that I
18 evaluated him it was my opinion that he was competent. I
19 haven't seen him in many months.

20 Q Now, you mentioned that in your work at Butner you
21 participated in both competency evaluations and restoration
22 evaluations; is that right?

23 A Yes.

24 Q Can you describe for the Court how, if at all, those
25 two are different?

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1 A Yes. A restoration, a competency restoration
2 evaluation, first of all, is a much lengthier time period.
3 The individuals are sent to us for 120-day evaluation
4 periods. It's done in an inpatient versus an outpatient
5 setting. So it's in a federal medical center, and the
6 individual is on an inpatient unit where there are staff,
7 psychiatric nurses, for example, able to observe him
8 24 hours a day, custody staff, various rehabilitation staff,
9 and medical staff in addition to a psychologist,
10 psychiatrist, we typically work as a team. And then we also
11 consult with a neuropsychologist and we have a social worker
12 on our team. So it's very comprehensive. We have a lot of
13 staffing and eyes on the individual during that time.

14 We also, as part of the restoration process, we
15 enroll individuals in a competency restoration group, and
16 they attend that group weekly to learn about general factual
17 information regarding the legal system. If necessary, we
18 provide medication treatment options if we feel that that's
19 necessary for the restorative process.

20 Q Okay.

21 THE COURT: As we sit here today, you do not have
22 an opinion as to whether this man is capable of being
23 competent of standing trial as you said previously? You
24 don't know, do you, because of the 16-month gap, if anything
25 else?

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1 THE WITNESS: That's correct.

2 THE COURT: Go ahead.

3 Q Now, as a forensic psychologist who is acting as a
4 primary evaluator, do you do anything differently in the
5 course of a restoration evaluation than you do in a
6 competency evaluation?

7 A I think -- well, for one thing, I can do more. I have
8 more time, I have more individuals I can consult with.
9 Typically, an individual may not present the same way with
10 me during a limited session as he does on the housing unit
11 with his peers, with the staff around him in the evening
12 hours, for example. So the one thing that's different is I
13 have a lot more individuals I can consult with and take more
14 of a team approach.

15 The other thing is the restoration phase, that's
16 different than an initial competency phase, where treatment
17 medication may not be offered, if necessary. Mr. Bumagin
18 did not have a psychotic disorder or a severe mood disorder,
19 so medications of that nature were not offered to him or
20 recommended, but we do enroll individuals in a
21 psychoeducational group.

22 Q Now, in the course of your evaluation, did you
23 personally interact with Mr. Bumagin?

24 A I did.

25 Q And can you describe the context in which you

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1 interacted with him?

2 A Yes. I interviewed him individually or with another
3 member or two of the treatment team on at least five formal
4 occasions. I saw him multiple times on the housing unit
5 floor walking around the unit where I would go over to see
6 other inmates. I would always stop to talk to him or he
7 would come and talk to me, he would recognize me and want to
8 talk to me and say hi, and he was very friendly. I would
9 talk with the nursing staff about him in those situations
10 too. I met with him with other team members. So for
11 individual -- individual clinical interviews and interviews
12 with other individuals and then informally was my personal
13 contact with him.

14 Q How much time did you spend with the defendant in
15 formal interactions?

16 A I spent approximately four hours with him individually
17 formally.

18 Q And then how much would you see him informally?

19 A Typically, a couple of times a week.

20 Q And when would that happen?

21 A It would happen when I would go over to his housing
22 unit, it was very close to my office, so I was over there
23 quite a bit. Often he was on the recreation yard and was
24 not on the unit, but when he was on the unit, I would say
25 hello to him.

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1 Q At any time during your interactions with the defendant
2 did you give him a confidentiality warning?

3 A I did.

4 Q When?

5 A Initially when I first met with him in our receiving
6 and discharge area.

7 Q What did you tell him, if you remember?

8 A I don't know the exact words, but I've done this a lot
9 of times; and typically, my wording is that I tell the --
10 first of all, I ask -- I introduce myself and then I ask the
11 individual if they --

12 MS. DOLAN: I'm going to object to the typical
13 warning.

14 THE COURT: Do you have a letter, counsel?

15 MR. TROWEL: I'm sorry?

16 THE COURT: Do you have the letter that she sent?
17 She said she typically gives a letter. Do you have a copy
18 of the letter?

19 MR. TROWEL: I don't think she said that, your
20 Honor. I didn't hear that.

21 THE COURT: Did you give him a letter?

22 THE WITNESS: I did not give him a letter.

23 THE COURT: Did you read from a letter?

24 THE WITNESS: I did not.

25 THE COURT: You just did it from memory?

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1 THE WITNESS: Yes.

2 THE COURT: Do you remember exactly what you told
3 him?

4 THE WITNESS: I don't remember the exact words.

5 THE COURT: Okay. Then I'm going to sustain the
6 objection.

7 MR. TROWEL: Can I ask about the --

8 Q Or, Dr. Grant, what is your typical practice with
9 respect to defendants at intake?

10 THE COURT: Do have a typical practice?

11 THE WITNESS: I do.

12 THE COURT: What is your typical practice?

13 THE WITNESS: Typical practice is to introduce
14 myself when I meet with them and tell them that I would be a
15 primary evaluator. I tell them that we have a psychiatrist
16 who will also be meeting with them at some point. I ask
17 them if they know why they were sent to Butner. And then if
18 they don't give me the correct information, I tell them why
19 and that would be that they were sent there for an
20 evaluation from the court, if that's the case. And then I
21 also tell them that one thing, before we go any further,
22 they need to understand that everything that we talk about
23 in the context of that evaluation and everything that I talk
24 to them about and another doctor talks to them about, can go
25 into a report that goes back directly to the Judge, because

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1 the Judge has ordered this evaluation. And that means --
2 and also, I can be called to testify in his case. And also,
3 that the letter -- or the report goes to the government
4 attorney or the prosecutor and also the defense attorney.
5 And so he needs to understand that the typical
6 patient/doctor confidentiality, if they understand that
7 word. If they don't understand confidentiality, I'll say
8 nothing stays between us, nothing is a secret, everybody can
9 know about it because the court has ordered this evaluation,
10 and so you need to know that.

11 Q Did you give Mr. Bumagin a confidentiality warning?

12 A Yes.

13 Q And did he appear to understand it?

14 A He did.

15 Q What led you to believe that?

16 A I asked him if he understood what I had said, he said
17 yes. And I asked him to repeat it back in his own words.

18 Q And how did he respond to that question?

19 A I did not unfortunately take notes of what he said
20 exactly, but it's my recollection that he said -- there are
21 no secrets, everybody will know everything.

22 Q At any point in your interactions with the defendant,
23 did you tell him that he had to answer your questions?

24 A I did not.

25 Q When you spoke to the defendant, did it appear that he

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1 was speaking to you voluntarily?

2 A Yes.

3 Q What led you to believe that?

4 A He provided information voluntarily to me. I typically
5 didn't have to ask him very many questions at all, he was
6 very eager to talk to me.

7 Q Can you describe generally the defendant's demeanor
8 during your interactions with him?

9 A Yes. He was cooperative. He, as I said, seemed to
10 enjoy our conversations. He would seek me out on the unit
11 when he saw me and say hello. And he remembered me, and he
12 remembered me from one meeting to the next. He remembered
13 lots of things that occurred. For example, he would tell me
14 what a medical doctor had told him or he would tell me that
15 he had an appointment, that sort of thing.

16 Q In your view, did the defendant understand why he was
17 at Butner?

18 A Yes.

19 Q Why? What led you to that conclusion?

20 A We discussed it many times. He knew he was having an
21 evaluation and he was also getting factual information
22 throughout the course of the study in his competency
23 restoration group that gave him that information.

24 Q In your interactions with him did he ever forget who
25 you were?

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1 A He did not.

2 Q Did he ever forget why he was at Butner that you were
3 aware of?

4 A Not to my knowledge.

5 Q In your interactions with him did he appear to forget
6 conversations that you had had with him?

7 A No, he did not.

8 Q Now, you interviewed the defendant at intake; is that
9 correct?

10 A Yes.

11 Q And do you recall if the defendant complained of memory
12 problems and reported to you that there was -- that his
13 father had Alzheimer's disease?

14 A He did.

15 Q Did he volunteer that information?

16 A He did.

17 Q Did you prompt him for it?

18 A I did not.

19 Q So did he recall that on his own?

20 A Yes.

21 Q Did you also note in your intake report that he had
22 been prescribed OxyContin in the community?

23 A He noted that, yes.

24 Q Did he tell you that?

25 A I don't know if he told me that at intake, but it came

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1 up during the initial nursing screening the same day
2 everyday after.

3 Q Did he remember the word OxyContin?

4 A He said Oxy five.

5 Q What does that mean to you, if anything?

6 A It's a high dose of OxyContin, five milligrams.

7 Q So he had -- he remembered both the name of the drug
8 and the dosage independently?

9 A Yes.

10 Q Now, you -- I think you testified on direct that the
11 defendant had at some point a tendency to get lost in the
12 housing unit; is that right?

13 A He did.

14 Q Can you elaborate on that a little bit?

15 A Yes. During the first week or week and a half the
16 officers reported to me that he was having trouble locating
17 his cell. They all look alike; and on this particular
18 housing unit, they did not have pictures as they do on some
19 of the units or their register numbers or their name. And
20 he had trouble remembering which cell was his.

21 So as a result of that the staff -- to be helpful,
22 they put a reindeer -- it was around Christmastime, so they
23 put a reindeer above his cell so he could find his cell.

24 Q Once they did that, did he have any other trouble
25 finding his cel?

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1 A He had no trouble finding his cell. And, in fact,
2 early on he had no trouble finding the recreation yard, the
3 chow hall and other places in the institution, it just took
4 him a week or so to acclimate.

5 Q Did you, in your observations of Mr. Bumagin, did you
6 see -- did he display memory problems?

7 A No.

8 Q In other words, did you see evidence of memory
9 problems?

10 A I personally did not see them during my interactions
11 with him.

12 Q Did he -- did other evaluators see them?

13 A Yes.

14 Q Did he present were those memory problems consistent
15 across evaluators?

16 A They were not.

17 Q How were they inconsistent?

18 A Well, for instance, I said he didn't present with
19 memory problems. I remember a situation where he told me he
20 was not going to competency restoration groups or he told
21 one of the members of the team -- it's been so long, it's
22 hard for me to remember all the details -- but he told one
23 of the members of team he--

24 MS. DOLAN: I'm going to object to this.

25 THE COURT: What's the basis of the objection?

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1 MS. DOLAN: Hearsay, and she doesn't remember
2 anyway.

3 THE COURT: Do you remember?

4 THE WITNESS: I remember the situation, I just
5 don't remember if he told me or if he told my colleague.

6 MS. DOLAN: Well that -- now I'm really going to
7 object.

8 THE COURT: You don't remember if he talked to you
9 or your colleague, I'm going to sustain the objection.
10 That's just too vague. Move on to another area.

11 BY MR. TROWEL:

12 Q The original question, Dr. Grant, was how his memory
13 problems were presented inconsistently. Without repeating
14 the antidote you were giving us, can you address that
15 question?

16 A Yes. He would forget a colleague's -- one of my
17 colleague's names and then later remember it. He went to --
18 he remembered one of the social workers, he said he did not
19 remember who she was, that he had never been to the group,
20 but then he was able to describe her in detail and addressed
21 her by name when she walked in.

22 Q Did you have a discussion with Mr. Bumagin about
23 Russian restaurants in Brooklyn?

24 A Yes.

25 Q What happened in the course of that discussion?